

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION
No. 2000-O-08**

DATE ISSUED: July 14, 2000

ISSUED TO: Ellen Elder, President, Hettinger Public School
District Board

CITIZEN'S REQUEST FOR OPINION

On June 19, 2000, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Joey Hedstrom of the Adams County Record asking whether the Hettinger Public School District Board violated N.D.C.C. § 44-04-20 by holding a series of smaller gatherings regarding school business, collectively involving a quorum of the members of the Board, which were not preceded by sufficient public notice.

FACTS PRESENTED

On May 30, 2000, the Hettinger Public School District Board (Board) held a special meeting. According to an article by Ms. Hedstrom in the June 5 Adams County Record about the special meeting, the five members of the Board engaged in a discussion on the propriety of one board member having separate conversations with at least two other members of the Board on the same item of school business without considering the conversations a "meeting" which must be open to the public and preceded by sufficient public notice. See N.D.C.C. §§ 44-04-19, 44-04-20. From the article, it appears at least one board member acknowledged that she had such conversations in the past with at least two other members of the Board, but the members of the Board disagreed on whether the conversations were a "meeting." Based on the Board's discussion and disagreement, Ms. Hedstrom asked for this opinion.

ISSUE

Whether the members of the Hettinger Public School District Board engaged in a series of one-on-one conversations regarding school business, collectively involving a quorum of the Board, without providing sufficient public notice of those conversations.

ANALYSIS

All "meetings" of the governing body of a public entity are required to be open to the public unless otherwise specifically provided by law, N.D.C.C. § 44-04-19, and must be preceded by sufficient public notice, N.D.C.C. § 44-04-20. The definition of "meeting" is not limited to face-to-face gatherings of a quorum of the members of a governing body, thus, a "meeting" could occur via telephone conversations. The definition of "meeting" also includes a gathering of:

Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.

N.D.C.C. § 44-04-17.1(8)(a)(2).

For a series of conversations to fall under this definition, it is not necessary that the Board members intend to violate the law. 1998 N.D. Op. Att'y Gen. O-27, O-33 (Mar. 3 to Paul Ebeltoft). Rather:

[W]hat is required is that the Board intentionally met in groups smaller than a quorum, yet collectively involving a quorum, and intentionally discussed or received information regarding items of public business that would have had to occur in an open meeting if any of the gatherings had been attended by a quorum of the Board.

Id. at O-33 to O-34. From the newspaper article, the contents of which the Board has not disputed, it appears that the Board engaged in a series of smaller gatherings which fell under the definition of "meeting" in N.D.C.C. § 44-04-17.1(8)(a)(2). However, the article does not mention whether the members of the Board indicated when those conversations might have occurred.

In responding to a request for an opinion under N.D.C.C. § 44-04-21.1, this office is limited to reviewing violations which are alleged to have occurred within the last 30 days. Thus, in its request for information from the Board, this office limited its inquiry to any meetings or smaller gatherings which occurred on or after May 20, 2000 (30 days before the June 19 request for this opinion). This review period started only ten days before the May 30 special meeting of the Board.

In response to this office's inquiry, the Board indicated that a special meeting was held on June 29, at which each member denied participating in a series of smaller conversations regarding school business, collectively involving a quorum, since May 20, 2000. Whether the Board held such sequential conversations is a question of

ATTORNEY GENERAL OPEN RECORDS AND MEETINGS OPINION
Hettinger Public School District Board
July 14, 2000
Page 3

fact. "In any opinion issued under [N.D.C.C. § 44-04-21.1], the attorney general shall base the opinion on the facts given by the public entity." N.D.C.C. § 44-04-21.1(1). Accordingly, since this office is not allowed to question the Board's assurance that a quorum of its members did not engage in a series of one-on-one conversations concerning school business since May 20, it is my opinion that the Board did not violate N.D.C.C. § 44-04-20 by failing to provide sufficient public notice of any such sequential conversations. We must presume, after comparing the Board members' remarks at the May 30 meeting with the Board's response to this office's inquiry, that the sequential conversations which were acknowledged by a least one member of the Board at the May 30 meeting occurred prior to May 20.

CONCLUSION

It is my opinion that the Board has not violated N.D.C.C. § 44-04-21.1 by failing to provide sufficient public notice of a series of smaller gatherings regarding school business, collectively involving a quorum of the Board, since May 20, 2000, the time for which we may conduct a review.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: James C. Fleming
Assistant Attorney General